THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ petition Nos.13848 and 16677 of 1999

Dated : 17.07.2007

Writ petition No.13848 of 1999:

Between:

Krishna Swamy S/o.Narayana Swamy,
R/o.52/A, Sebastian Road,
Secunderabad.

..... PETITIONER

And:

Municipal Corporation of Hyderabad, Rep. by its Commissioner, Lower Tank Bund Road, Hyderabad and another.

.....RESPONDENTS

Writ petition No.16677 of 1999:

Between:

Krishna Swamy, S/o Narayana Swamy,
R/o 52/A Sebastian Road , Secunderabad.

..... PETITIONER

And:

Municipal Corporation of Hyderabad, Rep. by its Commissioner, Lower Tank Bund Road, Hyderabad.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ petition Nos.13848 and 16677 of 1999

COMMON ORDER:

As the point involved in these two writ petitions is same, these writ petitions are disposed of by this common order.

Petitioner claims to be the owner of the plot bearing No.14 in Sy.No.116/4-1 situated at Banjara Hills, Hyderabad. He obtained sanction from the first respondent-Corporation for construction of three shops in the said plot. Thereafter, the Corporation acquired an extent of 1073 square yards of land in the said plot, in two different stages (650 + 423 square yards), from the petitioner for the purpose of widening the road. Subsequently, after negotiations, the Corporation fixed compensation for the land acquired from the petitioner, but the petitioner did not give consent for the same, being not satisfied with the quantum of compensation. Later, petitioner, by letter dated 08.09.1998, requested the City Planner, Circle No.5, for sanction for constructing shops in the remaining land in Plot No.14, but the same was rejected, by letter dated 22.10.1988, on the ground that the proposals are in violation of Zoning Regulations of 1981. Questioning the same, petitioner filed W.P.No.17592 of 1988, and the said writ petition was disposed of by a Division Bench of this Court on 22.11.1996. Aggrieved thereby, the first respondent carried the matter to the Supreme Court and raised an objection that the application made by the petitioner did not specifically indicate the land over which he proposed to raise construction. Therefore, petitioner sought permission of the Supreme Court for filing fresh application indicating the extent of land over which he proposed to make construction, and accordingly, the Civil Appeal was dismissed as infructuous, and the judgment of the Division Bench was also set aside. Petitioner is stated to be pursuing for sanction of the plan.

Be that as it may, now the grievance of the petitioner is that respondents have not initiated any proceedings for payment of compensation to him for the land acquired from him. Hence, he filed W.P.No.13848 of 1999.

Subsequent to the institution of the said writ petition, petitioner

alleges that the officials of the respondents came to his land on third and fourth of August 1999, and marked the same and took measurements, for the purpose of road widening and also tried to take possession of the marked land, without issuing notice to the petitioner and without following due process of law. Hence, the petitioner is constrained to file W.P.No.16677 of 1999 seeking a direction to the respondents not to interfere with his possession in respect of Plot No.14 without following due process of law.

The Chief City Planner of Municipal Corporation of Hyderabad has filed a counter-affidavit in W.P.No.13848 of 1999 stating that the petitioner is not the owner of the land in question and as such, he is not entitled to any compensation.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the Municipal Corporation of Hyderabad.

In the earlier writ petition filed by the petitioner, being W.P.No.17592 of 1988, the Division Bench of this Court had gone into various contentions put forth by the learned counsel for the petitioner as well as the learned Standing Counsel for Municipal Corporation of Hyderabad, and ultimately by its judgment dated 22.11.1996 disposed of the said writ petition observing as under:

> "We make it clear that if both the petitioner and the Municipal Corporation agree that compensation payable for acquisition of 1073.33 square yards is to be in lieu of exempting the petitioner from set backs, the parties may very well agree to that course. But, if no understanding is reached as mentioned above, then the petitioner shall be entitled to get permission for constructing the commercial structure on the site in question, subject to such set backs, as the Building Regulations contemplate for the commercial structure and then be entitled for compensation for the area of 1073.33 square yards for which the Municipal Corporation of Hyderabad shall initiate the proceedings. Should the Government set up a title to the land covered by this road widening portion mentioned above, then necessarily the same shall have to be considered by the Land Acquisition Officer, after considering the evidence, both oral and documentary."

The Corporation questioned the said judgment before the Supreme Court in Civil Appeal No.8727 of 1997. The Corporation raised an objection in the Civil Appeal that the application made by the petitioner herein does not specifically indicate the land over which he proposed to raise constructions. In the light of the same, petitioner herein sought permission of the Supreme Court to file a fresh application before the Corporation, and accordingly the Supreme Court, while permitting the petitioner to make fresh application, dismissed the appeal as infructuous and set aside the order of the Division Bench. At the same time, the Supreme Court directed the Corporation not to reject the fresh application as and when made on the ground that the petitioner is not the owner, unless it is entitled to do so under the Hyderabad Municipal Corporations Act or the Rules made thereunder.

The learned counsel for the petitioner contends that though this Court, in the earlier round of litigation, adjudicated the issue and directed the respondents to pay compensation, the respondents have not paid the compensation so far, instead, they took the stand that the petitioner is not the owner of the land admeasuring 1073.33 square yards, and neither he is entitled to compensation nor be permitted to make any constructions therein. However, this Court is of the view that the Corporation cannot be permitted to take such a stand in these writ petitions. In fact, in the earlier round of litigation, respondents took the very same stand, but the Division Bench of this Court, has rejected the said contention. The relevant portion of the said judgment is as under:

> "Now at this juncture, a counter has been filed stating that the petitioner is not having title for the entire area and that part of the land is recorded as Government land in the Town Survey Records. It is not stated as to why such a different stand is taken now, as originally, the Municipal Corporation did not take such a stand and in fact, accepted the title of the petitioner and taken over huge extent of 1073.33 square yards and offered compensation In fact, the plan was sanctioned in the year 1980, as stated above, treating the land as belonging to the petitioner. As such, we do not countenance the belated contention of the Municipal Corporation at this juncture denying the title of the

> petitioner. We make it clear that if the Government claims that land as its own and has got title to the said land based on legally acceptable documents, then it is for the Government to claim and it is not for the Municipal Corporation to espouse the cause of the Government. It is admitted that so far the Government did not lay any claim."

In the light of the said finding that the Corporation has no right whatsoever and it cannot take such a stand, in my considered view, the Corporation is estopped from taking such a stand in these writ petitions. Of course, it is the contention of the learned Standing Counsel for Municipal Corporation of Hyderabad that the said judgment of the High Court was set aside by the Supreme Court in Civil Appeal No.8727 of 1997 arising out of S.L.P.No.11987 of 1997. But, it must be noted that the Supreme Court did not go into the merits of the case, and dismissed the appeal as infructuous and set aside the judgment of the Division Bench, only on the statement made by the petitioner that he would file a fresh application for sanction specifically indicating the land over which he proposed to put up construction. It must also be noted that the Supreme Court further directed the Corporation not to reject the fresh application, if and when made, on the ground that the petitioner herein is not the owner unless it is entitled to do so under the Hyderabad Municipal Corporations Act or the rules, regulations or byelaws made thereunder. In fact, on this aspect, the Division Bench has made it very clear that if the Government claims to be the owner and got title over the land in question, based on legally acceptable documents, then it is for the Government to claim and it is not for the Corporation to espouse the cause of the Government. Though the judgment of the Division Bench is not in existence in the eye of law, admittedly till now the Government has not come forward stating that the land in question belongs to it. Hence, the Corporation cannot say that the petitioner has no right, whatsoever, over the land in question, and it can definitely be said the petitioner has right over the land in question and entitled to compensation.

It is not in dispute that the land in question admeasuring 1073.33

square yards was acquired by the Corporation for the purpose of road widening and the road is also stated to be widened. Though initially compensation was fixed at the rate of Rs.130 per square yard, but as the said amount was not acceptable to the land owners, including the petitioner, the then Special Officer addressed letters to the petitioner and others stating that it is not possible to hold further meetings on this issue, and assured that the Corporation would pay compensation as per the Land Acquisition Act 1894 (for short "the Act"). Hence, this Court deems it appropriate to direct the petitioner to give a fresh application to the Corporation seeking to fix the compensation in accordance with law.

For the foregoing reasons, these writ petitions are disposed of directing the petitioner to give a fresh application to the Corporation within a period of four weeks from today, seeking to fix the compensation in accordance with law, and on receipt of the same, the Corporation may negotiate with the petitioner and fix the compensation within a period of four weeks thereafter. If both petitioner and the Corporation mutually agree with the quantum of compensation to be fixed, the same shall be paid to the petitioner in accordance with law. If for any reason they do not arrive at consensus, then the Corporation may initiate land acquisition proceedings under the provisions of the Act and pay the compensation as provided for under the Act. There shall be no order as to costs.

_____

17.07.2007

sh